

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 32

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE IDAHO VIDEO SERVICE ACT; AMENDING TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 30, TITLE 50, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR FRANCHISING AUTHORITY, TO PROVIDE FOR THE USE OF PUBLIC RIGHTS-OF-WAY, TO PROVIDE FOR MODIFICATIONS OF EXISTING FRANCHISE AGREEMENTS, TO PROVIDE FOR FEES, TO PROVIDE FOR A HOLDER OF CERTIFICATE, TO PROVIDE FOR PROVISION OF ACCESS TO VIDEO SERVICE WITHIN A CERTAIN PERIOD, TO PROVIDE FOR AMENDMENT OF THE CERTIFICATE OF FRANCHISE AUTHORITY, TO PROVIDE FOR SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS, TO PROVIDE FOR A VIDEO SERVICE PROVIDER FEE, TO PROVIDE FOR NONDISCRIMINATION BY GOVERNMENTAL ENTITIES RELATING TO USE OF THE PUBLIC RIGHTS-OF-WAY, TO PROHIBIT DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS, TO PROVIDE FOR CUSTOMER SERVICE STANDARDS, TO PROVIDE FOR DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE AND TO PROVIDE FOR APPLICABILITY OF OTHER LAW; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 30, Title 50, Idaho Code, and to read as follows:

CHAPTER 30
IDAHO VIDEO SERVICE ACT

50-3001. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Video Service Act."

50-3002. DEFINITIONS. As used in this chapter:

(1) "Access to video service" means the capability of a video service provider to provide video service at a household address irrespective of whether a subscriber has ordered the service or whether the service is actually provided at that address.

(2) "Actual competition" means the physical installation and activation of a network to provide video service by a nonincumbent video service provider anywhere within a political subdivision in which there is an incumbent cable service provider.

(3) "Cable service" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2011.

(4) "Cable system" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2011.

(5) "Certificate of franchise authority" means a certificate issued by the Idaho secretary of state to a video service provider pursuant to the provisions of this chapter.

(6) "Franchise" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2011. A certificate of franchise authority issued pursuant to section 50-3003, Idaho Code, shall constitute a franchise for the purposes of 47 U.S.C. section 522.

(7) "Franchising entity" means the city, county or state authorized by state or federal law to grant a franchise.

(8) "Governing body" means the city council or the board of county commissioners of a political subdivision.

(9) "Incumbent cable service provider" means a person who provides cable service and holds a franchise issued by a franchising entity prior to July 1, 2011.

(10) "Local unit of government" means a city, county or other governmental entity of the state of Idaho having maintenance and operation responsibility over the public rights-of-way within an area for which a franchise or certificate of franchise authority has been issued by a franchising entity.

(11) "Nonincumbent video service provider" means:

(a) A person authorized under the provisions of this chapter to provide video service in an area in which cable service is being provided by an incumbent cable service provider; or

(b) A person authorized under the provisions of this chapter to provide video service in an area in which, on the effective date of this chapter, there was no incumbent cable service provider providing cable service.

(12) "Political subdivision" means a city or county of the state of Idaho.

(13) "Public rights-of-way" means the area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway or utility easement dedicated for compatible uses.

(14) "Service area" means contiguous geographical territory in the state of Idaho within which territory a video service provider is authorized to provide video service pursuant to a certificate of franchise authority.

(15) "Service tier" means a category of video service or those services provided by a video service provider and for which a separate rate is charged by the video service provider.

(16) "Subscriber" means any person in this state who purchases video service. "Subscriber" does not include any person who purchases video service for resale and who, upon resale, is required to pay a video service provider fee pursuant to this chapter or the terms of a local franchise.

(17) "System operator" means any person or group of persons who provide video service and directly, or through one (1) or more affiliates, own a significant interest in the system or facilities through which the video service is provided and which person has been issued a certificate of franchise authority pursuant to the provisions of this chapter.

(18) "Video service" means the provision of video programming generally considered comparable to video programming delivered by a television broadcast station, cable service or digital television service, without regard to the technology used to deliver the video service, and which service is provided primarily through equipment or facilities located in whole or in part in, on, under or over any public rights-of-way. The term includes cable service, but excludes any video programming provided to persons in their capacity as subscribers to commercial mobile service as defined in 47 U.S.C. sec-

tion 332(d), or video programming provided as part of and via a service that enables end users to access content, information, electronic mail or other services offered over the public internet.

(19) "Video service provider" means a provider of video service, and includes an incumbent cable or multichannel video service provider, a nonincumbent video service provider or a system operator, unless the context in which the term is used indicates otherwise.

(20) "Video service provider fee" means the amount paid by a system operator pursuant to section 50-3006, Idaho Code.

50-3003. FRANCHISING AUTHORITY -- USE OF PUBLIC RIGHTS-OF-WAY -- MODIFICATIONS OF EXISTING FRANCHISE AGREEMENTS. (1) On and after July 1, 2011, no person shall act as a video service provider or operate a video service network within the state of Idaho unless such person:

(a) Is an incumbent cable service provider providing cable service within an existing franchise area by permission of, or pursuant to, a franchise from a political subdivision in effect on the effective date of this chapter or a subsequent renewal thereof; or

(b) Has been granted a certificate of franchise authority to do business in the state of Idaho as a system operator by the Idaho secretary of state as required in this chapter.

(2) Any person seeking a certificate of franchise authority to provide video service shall submit an application to the Idaho secretary of state that is in accord with the requirements of this chapter and sets forth the following information:

(a) The name of the applicant and the address of its principal place of business within the state of Idaho and the names of the applicant's principal executive officers and its primary Idaho representative;

(b) A specific identification of the political subdivision(s), or portion thereof, constituting the service area wherein the applicant intends to provide video service;

(c) The date on which the applicant intends to begin providing video service in the service area described in the application;

(d) Verification signed by an officer or general partner of the applicant that:

(i) The applicant has filed with the federal communications commission all forms required by that agency in advance of offering video service in this state; and

(ii) The applicant is legally, financially and technically qualified to provide video service; provided however, that a cable operator that was providing service in Idaho pursuant to a franchise in effect on the day before the effective date of this section shall be deemed to be legally, financially and technically qualified to provide service; and

(e) Verification that the applicant has procured and will maintain comprehensive general liability insurance coverage and automobile liability insurance coverage underwritten by one (1) or more companies licensed to do business in the state of Idaho requiring that the insurance carrier pay on behalf of the applicant, to a limit of not less than five hundred thousand dollars (\$500,000) for bodily or personal injury,

1 death, or property damage or loss as a result of any one (1) occurrence
2 or accident, regardless of the number of persons injured or the number
3 of claimants, arising out of the negligent or otherwise wrongful act
4 or omission of the applicant or applicant's employees or agents. Ver-
5 ification that a certificate of self-insurance has been issued to the
6 applicant and maintained in accordance with the provisions of section
7 49-1224, Idaho Code, shall be deemed to satisfy the requirements of this
8 subsection.

9 (3) The application shall be accompanied by a filing fee as set forth in
10 section 50-3004, Idaho Code. Within thirty (30) days after filing of the ap-
11 plication, or within (30) days after the filing of supplemental information
12 necessary to make it complete, the secretary of state shall determine the
13 completeness of an application or, if applicable, shall notify the appli-
14 cant of a determination that the application is incomplete, state the basis
15 for that determination, and inform the applicant that the applicant may re-
16 submit a correct application. The secretary of state shall issue a certifi-
17 cate of franchise authority within fifteen (15) days after the secretary of
18 state's determination that the filed application is complete and in compli-
19 ance. Upon issuance of a certificate of franchise authority, the secretary
20 of state shall, within fifteen (15) days from the date of such issuance, pro-
21 vide written notice of such issuance to the governing body of each political
22 subdivision located, in whole or in part, within the service area designated
23 in the application for a certificate of franchise authority.

24 (4) Persons who have received a certificate of franchise authority as
25 set forth in this section may use the public rights-of-way of the state and
26 any political subdivision within the service area set forth in the certifi-
27 cate of franchise authority, subject to provisions of state law and appli-
28 cable local ordinances that are not in conflict with the provisions of this
29 chapter or the purposes or objectives thereof.

30 (5) If the holder of a certificate of franchise authority wants to mod-
31 ify the boundaries of an existing service area authorized under the certifi-
32 cate, the holder must file with the secretary of state written notice of the
33 modification and pay the fee required by section 50-3004, Idaho Code. The
34 holder of the certificate may make the modification on the date on which it
35 files the written notice with the secretary of state.

36 (6) A certificate of franchise authority is subject to the system oper-
37 ator's maintaining the qualifications necessary to initially obtain a cer-
38 tificate of franchise authority. Any holder of a certificate of franchise
39 authority issued pursuant to this chapter shall immediately notify the sec-
40 retary of state of the holder's failure to meet the standards established for
41 initial qualification for a certificate of franchise authority. Upon re-
42 ceipt of the notice by the office of the secretary of state, the holder's cer-
43 tificate of franchise authority shall be deemed to be revoked by operation
44 of law without the need for any notice, hearing or action by the secretary of
45 state. Use and occupancy by a system operator of the public rights-of-way in
46 the delivery of video service shall be subject to the laws of this state and
47 the police powers of the local units of government having jurisdiction over
48 the public rights-of-way in which the video service is to be delivered.

49 (7) No provision of this chapter shall diminish or otherwise limit the
50 authority of a local unit of government to enact nondiscriminatory, competi-

1 tively neutral local laws to govern the use or maintenance of public rights-
2 of-way as otherwise provided by law. No local unit of government shall un-
3 reasonably deny a holder of a certificate of franchise authority the use of
4 public rights-of-way to provide video service where a system operator com-
5 plies with the provisions of the applicable local ordinance or ordinances
6 governing the use of the public rights-of-way or, in the absence of such or-
7 dinances, with the provisions of this chapter and other provisions of state
8 law.

9 (8) If no local ordinance regulates installation of physical facil-
10 ities within public rights-of-way, the following requirements shall be
11 deemed the minimum standards for such activities:

12 (a) At least thirty (30) days prior to contemplated construction within
13 public rights-of-way, a specific description of the locations where the
14 facilities are proposed to be installed within the public rights-of-way
15 and the construction methods that are proposed must be provided to the
16 local unit of government responsible for rights-of-way procurement or
17 maintenance.

18 (b) A certificate of franchise authority granted pursuant to this
19 chapter carries with it an obligation to respect orderly management
20 and maintenance of public rights-of-way. Any video service provider
21 authorized hereby to use public rights-of-way shall employ sound con-
22 struction practices to maintain the integrity of public improvements
23 and preexisting rights-of-way conditions and shall be responsible for
24 repair or replacement of any improvements or maintenance or restoration
25 of any conditions disrupted by construction activities. The video ser-
26 vice provider shall cause any such repairs to be made promptly and in a
27 manner that complies with adopted standards or as otherwise appropriate
28 to restore the rights-of-way to conditions existing before installa-
29 tion.

30 (c) The certificate of authority granted pursuant to this chapter also
31 carries a duty to coordinate installation of any physical plant in pub-
32 lic rights-of-way with the public utilities or municipal services al-
33 ready using or contemplating use of the same or related rights-of-way.
34 Such coordination should endeavor to minimize conflicts and avoid dam-
35 age to existing or otherwise planned facilities.

36 (d) No local unit of government with authority or responsibility to
37 procure or maintain public rights-of-way shall discriminate against a
38 holder of a certificate of franchise authority issued pursuant to this
39 chapter with respect to access to rights-of-way or issuance of permits
40 to install facilities in public rights-of-way.

41 (9) A certificate of franchise authority shall be nonexclusive and
42 shall be for an initial term of ten (10) years, subject to changes in federal
43 law. A certificate of franchise authority may be renewed for additional ten
44 (10) year periods for system operators in compliance with the requirements
45 of subsection (2) of this section.

46 (10) A certificate of franchise authority may be transferred to any suc-
47 cessor of the system operator to which the certificate of franchise author-
48 ity was initially issued upon the successor filing an application contain-
49 ing the same information as required in subsection (2) of this section. Any
50 successor may only undertake operation and maintenance of video facilities

1 pursuant to an approved certificate of franchise authority upon providing
 2 notice to the local unit of government with jurisdiction concerning the pub-
 3 lic rights-of-way to be used. A successor shall be responsible to conform to
 4 approved plans and permits to coordinate installation and maintenance as re-
 5 quired by the local unit of government.

6 (11) A certificate of franchise authority may be terminated by the
 7 system operator submitting a written notice to the secretary of state and
 8 any affected local unit of government. No approval of the termination of
 9 the certificate of franchise authority shall be required by the secretary
 10 of state or by any affected local unit of government. Termination of cer-
 11 tificate of franchise authority shall not relieve a system operator of any
 12 subsequent obligation to mitigate the effects of abandoned physical facili-
 13 ties remaining in any public rights-of-way.

14 (12) To the extent required for the purposes of 47 U.S.C. sections 521
 15 through 561, the state of Idaho shall constitute the franchising authority
 16 for system operators in the state of Idaho.

17 (13) No local unit of government or other political subdivision of the
 18 state of Idaho may require a system operator to obtain a franchise, license,
 19 permit or other authorization from the local unit of government or political
 20 subdivision or impose any fee or impose any other requirement for the provi-
 21 sion of video services within the geographic territory of such local unit of
 22 government or political subdivision, unless such fee or requirement is ex-
 23 pressly authorized by this chapter.

24 (14) Any person may submit an application for a certificate of franchise
 25 authority, including an incumbent cable service provider, when such incum-
 26 bent cable service provider faces actual competition by another system oper-
 27 ator, upon the expiration of a franchise agreement held by an incumbent ca-
 28 ble service provider, or in a political subdivision where an incumbent cable
 29 service provider does not hold a certificate of franchise authority as of the
 30 date of this chapter. Upon the granting of a certificate of franchise au-
 31 thority to an incumbent cable service provider the provider's existing fran-
 32 chise shall no longer be of any force or effect and shall not be enforceable
 33 by the local unit of government of this state. The local unit of government
 34 shall promptly return to the video service provider any letter of credit,
 35 performance bond, security deposit, certificate of insurance or any other
 36 similar instrument. It shall be in an incumbent cable operator's sole dis-
 37 cretion to determine, in each area where it provides cable service, whether
 38 or not to apply for a certificate of franchise authority or continue to pro-
 39 vide service under an existing certificate of franchise authority.

40 50-3004. FEES. (1) In carrying out the provisions of this chapter, the
 41 secretary of state shall charge and collect the fees set forth in this sec-
 42 tion.

43 (2) The filing fee for accepting an application for a certificate of
 44 franchise authority shall be one thousand dollars (\$1,000).

45 (3) The filing fee for accepting an amendment to a certificate of fran-
 46 chise authority or providing a notice required by this chapter shall be five
 47 hundred dollars (\$500).

1 50-3005. HOLDER OF CERTIFICATE -- PROVISION OF ACCESS TO VIDEO SERVICE
 2 WITHIN CERTAIN PERIOD -- AMENDMENT OF CERTIFICATE OF FRANCHISE AUTHORITY --
 3 SUSPENSION OF AUTHORITY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS. (1)
 4 Not later than twenty-four (24) months after the date on which the secretary
 5 of state issues a certificate of franchise authority pursuant to section
 6 50-3003, Idaho Code, the holder of the certificate must provide access to
 7 video service to at least one (1) household within the territorial bound-
 8 aries of each service area identified in and authorized by the certificate
 9 of franchise authority.

10 (2) If a holder of a certificate of franchise authority does not pro-
 11 vide access to video service within the territorial boundaries of a service
 12 area within twenty-four (24) months from the date the certificate of fran-
 13 chise authority authorized the provision of video service within the service
 14 area, the holder's certificate of franchise authority shall be deemed to be
 15 revoked by operation of law as to such service area without the need for any
 16 notice, hearing or action by the secretary of state and such certificate of
 17 franchise authority shall not thereafter authorize the provision of video
 18 service within such service area by the holder of the certificate.

19 50-3006. VIDEO SERVICE PROVIDER FEE. (1) Every system operator acting
 20 pursuant to authorization provided in this chapter shall pay to the politi-
 21 cal subdivision in which it provides video service a fee as required in this
 22 section. For the purposes of this section, subscribers whose service ad-
 23 dress is within the jurisdictional limits of a city shall be deemed city sub-
 24 scribers and those subscribers whose service address is outside the juris-
 25 dictional limits of a city shall be deemed county subscribers.

26 (2) The obligation to pay such a fee shall commence upon commencement of
 27 the provision of video service to subscribers. The video service provider's
 28 fee shall be paid to the political subdivision in which it provides video
 29 service on a quarterly basis, forty-five (45) days after the close of each
 30 calendar quarter, and shall be calculated as a percentage of gross revenues,
 31 as defined in subsection (4) of this section. Except as provided in sec-
 32 tion 50-3007, Idaho Code, the political subdivision may not require any ad-
 33 ditional fees or charges from the system operator and may not require the use
 34 of any other calculation method.

35 (3) The percentage to be applied against gross revenue pursuant to this
 36 section shall be set annually by the political subdivision in an amount equal
 37 to the percentage paid by an incumbent cable service provider or five percent
 38 (5%), whichever is less. If there is no incumbent cable service provider
 39 having a franchise agreement with the political subdivision, or if a politi-
 40 cal subdivision has not previously established and accessed such fee to an
 41 incumbent cable service provider, the fee to be paid shall be established an-
 42 nually by ordinance by the political subdivision, but shall in no event be in
 43 excess of five percent (5%) of the gross revenues, as set forth in subsection
 44 (4) of this section. Nothing herein prohibits a political subdivision from
 45 applying a fee percentage that is less than five percent (5%) so long as such
 46 fee is applicable to all video service providers within the political subdivi-
 47 sion, regardless of whether they provide video service pursuant to a local
 48 franchise or a certificate of franchise authority.

49 (4) (a) For purposes of this section:

(i) "Gross revenues" means all revenues, calculated in accordance with generally accepted accounting principles (GAAP), that are received by the system operator from subscribers for providing video service to video subscribers within the jurisdictional limits of the political subdivision. Gross revenues shall include the following:

1. All recurring charges and fees paid by subscribers for the provision of video service, including equipment rental, late fees, insufficient funds fees and fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video services;
2. Event-based charges for video service, including pay-per-view and video-on-demand;
3. Any other consideration a video service provider receives from its subscribers for providing video service when it is received in a transaction that would evade imposition of a franchise fee if such consideration is not included in revenue, except for revenue excluded pursuant to subparagraph (ii) of this subsection.

(ii) "Gross revenues" does not include:

1. Any revenues not actually received, even if billed, such as bad debt net of any recoveries of bad debt;
2. Refunds, rebates, credits or discounts to subscribers or a local unit of government to the extent not already offset by subparagraph (i) of this subsection and to the extent the refund, rebate, credit or discount is attributable to the video service;
3. Any revenues received by the system operator or its affiliates from the provision of services or capabilities other than video service, including advertising sales, telecommunications services, information services, home shopping or similar programming advertising, and services, capabilities and applications that may be sold as part of a package or bundle, or functionally integrated, with video service;
4. Any revenues received by the provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement and electronic publishing;
5. Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge;
6. Amounts billed to video service subscribers to recover taxes, fees, surcharges or assessments imposed on a video service provider or a video customer or otherwise collected by a video service provider from video service subscribers for pass-through to any federal, state or local government agency, including the franchise fee and FCC user fee;

1 7. Any foregone revenue from the provision of video service
2 at no charge to any person, except that any foregone revenue
3 exchanged for trade, barter, service or other item of value
4 shall be included in gross revenue;

5 8. Sales of capital assets or surplus equipment;

6 9. Reimbursement by programmers of marketing costs actually
7 incurred by the provider for the introduction of program-
8 ming; or

9 10. The sale of video service for resale to the extent the
10 purchaser certifies in writing that it will resell the ser-
11 vice and pay a video service provider fee with respect to the
12 service.

13 (b) In the case of a video service that is bundled or integrated
14 functionally with other services, capabilities or applications, the
15 portion of the system operator's revenue attributable to the other ser-
16 vices, capabilities or applications shall be included in gross revenues
17 unless the provider can reasonably identify the division or exclusion
18 of the revenue from its books and records that are kept in the regular
19 course of business.

20 (c) Revenue of an affiliate shall be included in the calculation of
21 gross revenues to the extent the treatment of the revenue as revenue of
22 the affiliate would have the effect of evading the payment of the video
23 service provider fee that would otherwise be paid for video service.

24 (5) Payment of the fees as required in this section shall be accompanied
25 by a written report identifying the amount of revenues by category of a ser-
26 vice and the number of customers receiving each category of service, if any.
27 A political subdivision may, upon reasonable advance written notice, but not
28 more frequently than once in any calendar year, review the business records
29 of a system operator to the extent necessary to ensure proper and accurate
30 payment of the video service provider fee. A video service provider shall
31 provide sufficient information about such revenues to a political subdivi-
32 sion to allow a proper compliance review by such political subdivision. The
33 system operator shall keep all business records reflecting any gross rev-
34 enues, even if there is a change in ownership, for at least three (3) years
35 after those revenues are recognized by the system operator in its books and
36 records. All records reasonably necessary for the audit shall, at the dis-
37 cretion of the political subdivision, be made available by the system opera-
38 tor at the location within the jurisdiction where the records are kept in the
39 ordinary course of business, or may be provided electronically to the polit-
40 ical subdivision with its consent. The political subdivision and the system
41 operator shall each be responsible for their respective costs of the audit,
42 unless the audit discloses that the system operator has underpaid the video
43 service provider fee by more than seven percent (7%) during the examination
44 period, in which case the system operator shall pay all of the reasonable and
45 actual costs of the audit. Any undisputed amount or refund due to the polit-
46 ical subdivision or the system operator shall be paid within sixty (60) days,
47 plus interest at the statutory rate on civil judgments.

48 (6) Any system operator may identify and collect the amount of the video
49 service provider fee as a separate line item on the regular bill of each sub-
50 scriber.

1 (7) Any city annexing lands shall notify a system operator in writing of
2 any such annexation, including a description of the territory annexed. Be-
3 ginning the first day of the calendar quarter occurring after the system op-
4 erator has received at least forty-five (45) days' notice of annexation of
5 customers into the city's corporate limits, subscribers within such annexed
6 territory shall, for purposes of this section, be considered to be city sub-
7 scribers.

8 50-3007. NONDISCRIMINATION BY GOVERNMENTAL ENTITIES RELATING TO USE
9 OF PUBLIC RIGHTS-OF-WAY. (1) A local unit of government shall allow the
10 holder of a certificate of franchise authority to install, construct and
11 maintain facilities within the public rights-of-way, over which the local
12 unit of government has jurisdiction, to enable the provision of video ser-
13 vices to subscribers to such services. The local unit of government shall
14 provide the holder of such certificate of franchise authority open, com-
15 parable, nondiscriminatory and competitively neutral access to the public
16 rights-of-way within its jurisdiction.

17 (2) A local unit of government may not discriminate against the holder
18 of a certificate of franchise authority in any manner, including:

19 (a) The authorization or placement of facilities in public rights-of-
20 way that is necessary for the provision of video services;

21 (b) Access to a public building; or

22 (c) The terms or conditions for access to any utility pole within con-
23 trol of the jurisdiction.

24 (3) A local unit of government may impose a permit fee on a system opera-
25 tor relating to the opening, closing, inspection or repair of public rights-
26 of-way over which rights-of-way the local unit of government has jurisdic-
27 tion, but only to the extent it imposes such a fee on incumbent cable service
28 providers or others assessing the public rights-of-way relating to the open-
29 ing, closing, inspection or repair thereof. Any fee authorized in this sec-
30 tion may not exceed the actual costs incurred by the local unit of government
31 issuing the permit that are directly related to the system operator's activ-
32 ity in the rights-of-way with which the permit is associated. In no event may
33 a fee under this subsection be charged:

34 (a) If the system operator already has paid a permit fee in connection
35 with the same activity in the public rights-of-way that would otherwise
36 be covered by the permit fee under this section; or

37 (b) For general revenue purposes.

38 50-3008. DISCRIMINATION AMONG POTENTIAL RESIDENTIAL SUBSCRIBERS PRO-
39 HIBITED. A system operator may not deny access to video service to any group
40 of potential residential subscribers because of the income of the residents
41 in the local area in which such group resides. The office of the attorney
42 general is hereby authorized to investigate and enforce the nondiscrimina-
43 tion requirements as provided in this chapter.

44 50-3009. CUSTOMER SERVICE STANDARDS. A system operator shall comply
45 with the customer service requirements set forth in 47 CFR 76.309(c), as
46 amended from time to time, and shall maintain a local or toll-free telephone
47 number for customer service contact.

1 50-3010. DESIGNATION AND USE OF CHANNEL CAPACITY FOR PUBLIC, EDUCA-
2 TIONAL OR GOVERNMENTAL USE. (1) On or after the date on which a video service
3 provider first provides video service to at least one (1) subscriber within
4 the service area of a political subdivision, a system operator shall design-
5 ate one (1) or more channels for public, educational or governmental (PEG)
6 use, as follows:

7 (a) Designate channels for PEG use equal in number to those that have
8 been activated by an incumbent cable service provider on the date on
9 which the system operator first provides video service to at least one
10 (1) subscriber within such political subdivision.

11 (b) If there is no incumbent cable service provider or no channels
12 for PEG use have been activated within the jurisdictional limits of
13 the political subdivision located within the video service provider's
14 service area on the date on which the video service provider first pro-
15 vides video service to at least one (1) subscriber therein, the video
16 service provider shall, upon request, provide a maximum of two (2), in
17 total, PEG channels for a political subdivision with a population of at
18 least fifty thousand (50,000), and one (1), in total, PEG channels for
19 a political subdivision with a population of less than fifty thousand
20 (50,000); provided however, that a political subdivision may waive PEG
21 requirements of this section.

22 (c) The number of PEG channels set forth in paragraphs (a) and (b) of
23 this subsection shall constitute the total number of PEG channels that
24 a system operator may be required to designate on any single head-end or
25 hub office, or on all commonly owned video service networks that share
26 a common head-end or hub office, regardless of the number of political
27 subdivisions served from that head-end or hub office. If more than one
28 (1) political subdivision is served by a single or common head-end or
29 hub office, the populations within the jurisdictions of all those po-
30 litical subdivisions shall be aggregated to determine the total number
31 of PEG access channels under subsection (1) (a) and (b) of this section.

32 (d) Channels for PEG use provided by a video service provider may be lo-
33 cated by the video service provider on any service tier subscribed to by
34 more than fifty percent (50%) of a video service provider's subscribers
35 or may be provided as an on-demand service which is available to its sub-
36 scribers without an additional charge. Channels for PEG use shall be of
37 similar quality and functionality to that offered by commercial chan-
38 nels on such tier of service unless the signal is provided to the video
39 service provider at a lower quality or with less functionality.

40 (2) The production and content of any programming aired on any channel
41 provided for PEG use shall be solely the responsibility of the public, edu-
42 cational and governmental agencies receiving the benefit of such capacity.
43 The video service provider shall bear the responsibility for the transmis-
44 sion of such content only to the extent that such content complies with the
45 requirements of subsection (3) of this section.

46 (3) The public, educational or governmental agency producing the PEG
47 programming and transmitting it to the video service provider shall ensure
48 that all transmissions, content or programming are provided or submitted in
49 a manner or form that is compatible with the video service provider's net-
50 work, as that may change from time to time. Governmental entities utiliz-

ing channels for PEG use shall make the programming of any PEG channel available to all video service providers providing service within such governmental entity's jurisdiction in a nondiscriminatory manner. Each system operator shall be responsible for providing one (1) point of connectivity to the governmental entity's PEG channel distribution point within the jurisdiction to be served. The governmental entity providing programming for use on a channel designated for PEG use may request a change of the point of connectivity but shall pay the system operators all costs associated with the change of the point of connectivity.

(4) No franchising entity may hereafter require a video service provider to provide any institutional network or equivalent capacity on its video service network.

(5) Where technically feasible, a video service provider shall use reasonable efforts to interconnect its video network for the purpose of sharing PEG programming with other video service providers. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Video service providers shall negotiate in good faith to provide interconnection of PEG channels. The video service provider requesting interconnection shall pay all costs for such interconnection.

(6) A political subdivision may not require a video service provider to provide any funds, services, programming, facilities or equipment related to public, educational or governmental use of PEG channel capacity designated for PEG use. The operation of any PEG channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the governmental entity receiving the benefit of such channel, and the video service provider shall bear only the responsibility for the transmission of the programming on each such channel to subscribers and the initial cost of connecting to existing and obligated PEG access channels.

50-3011. APPLICABILITY OF OTHER LAW. (1) The provisions of this chapter are intended to be construed to be consistent with the federal cable communications policy act of 1984, 47 U.S.C. sections 521 through 573.

(2) Except as otherwise stated herein, nothing in this chapter shall be interpreted to prevent an incumbent cable service provider, a nonincumbent video service provider, a system operator, a local unit of government or a franchising entity from seeking clarification of its rights and obligations under federal or state law or to exercise any right or authority under federal or state law.

(3) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of titles 61 and 62, Idaho Code, regarding telecommunications service within the state of Idaho, nor to require a telephone corporation to obtain a certificate of franchise authority or local authorization pursuant to this chapter for the purpose of permitting or authorizing the telephone corporation to construct, upgrade, operate or maintain its telecommunications system to provide telecommunications service.

SECTION 2. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason,

1 such declaration shall not affect the validity of the remaining portions of
2 this act.